

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GRAPHITE ELECTRODES (
ANTITRUST LITIGATION (Master File No. 97-CV-4182
(

MOTION OF THE UNITED STATES TO RESCIND
THE MARCH 8, 2000 ORDER OF THE COURT

The Government moves the Court to rescind the March 8, 2000 Order relating to discovery in In re: Graphite Electrodes Antitrust Litigation. The Government has just received Mitsubishi's Motion to Modify the Court Order dated March 8, 2000. The Government agrees with the position set forth by Mitsubishi that the Government should not obtain by civil discovery that to which it is not entitled through the Rules of Criminal Procedure, and, therefore, any order permitting limited discovery in the civil case should prohibit disclosure to the Government. It remains the position of the Government that an order should be entered staying all discovery apart from possible production of documents. With respect to whether any discovery should proceed, the Government has no position except that should the Court allow limited discovery to proceed, the Order should prohibit disclosure to the United States of material produced.

The current situation arose when the Government was asked by Mitsubishi to join in a stay of discovery in the civil action. The Government declined to join in Mitsubishi's motion, but stated that, as we had done in the course of the grand jury investigation, the Government would file a motion to stay depositions and interrogatories on substantive matters. Counsel for Mitsubishi did show the Government its brief before it was filed. The confusion seems to be over the following statements:

24. I have spoken with Robert E. Connolly, Chief of the Philadelphia office of the Antitrust Division of the Department of Justice, and he advised me that the

Government will oppose any effort to take the depositions of cooperating witnesses.

25. I also informed Mr. Connolly of Mitsubishi's intention to seek a stay of civil discovery against Mitsubishi. Mr. Connolly advised me that the Government will file a motion for a stay of the civil proceedings until after the completion of the criminal trial and that the Government will seek a trial date of no later than September 11, 2000.

Rosdeitcher affidavit of February 22, 2000 at 24,25.

Based on this affidavit, which was consistent with previous conversations with Mr. Rosdeitcher, the Government believed it had declined to join Mitsubishi's motion for a complete stay of all discovery and had committed to filing a motion for a stay, as we had done earlier in the civil cases, objecting to certain depositions and interrogatories. Counsel for Mitsubishi apparently believed the Government had committed to filing for a total stay of any discovery.

The Government apologizes to the Court, counsel for Mitsubishi and the plaintiffs for this misunderstanding. Apparently, due to this misunderstanding, Mitsubishi did not raise its concern about the Government gaining access to documents produced in civil discovery until after the Government filed its motion. Having just read Mitsubishi's Motion to Modify the Court's Order Dated March 8, 2000, the Government agrees that as a matter of equity and law the Government should not have access to documents produced by Mitsubishi or Mitsubishi International Corporation in the course of civil litigation if discovery is permitted to proceed.

The Government initially proposed a limited stay, as we have done on previous occasions, in an attempt to balance the needs of the plaintiffs to proceed with discovery with the Government's interest in a stay. At this time, the Government has no position on whether the stay should be complete as

requested by Mitsubishi or limited as requested by the plaintiffs. The Government does agree, as stated, that if any discovery is permitted to proceed, the Order should prohibit disclosure by the plaintiffs to the Government.

Dated:

Respectfully,

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ORDER

And Now, this 15th day of March 2000, upon consideration of the Motion of the United States to rescind the Court's Order dated March 8, 2000, related to discovery in In re: Graphite Electrodes Master File No. 97-CV-4182, it is hereby Ordered that the motion be and is granted.

Therefore, the Order dated March 8, 2000 is hereby rescinded.

UNITED STATES DISTRICT JUDGE